

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Sanders Lead Company Inc.
Troy, Pike County, AL**

USEPA ID NUMBER ALD046481032

ORDER NO. 10-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Sanders Lead Company Inc. (hereinafter "Sanders") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Sanders operates a secondary lead smelting facility in Troy, Pike County, Alabama, that is assigned EPA Identification Number ALD046481032. Seven permitted land disposal units are currently undergoing post-closure care at the facility.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On August 26, 2009, Department personnel conducted an on-site compliance evaluation inspection (hereinafter "CEI") of Sanders. The CEI and a review of Sanders' compliance showed the following:

A. Pursuant to Permit Condition VI.B.6.a. and ADEM Admin. Code r. 335-14-5-.14(11)(d)1., the owner or operator must maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events. Areas on the caps of the closed Wastewater Treatment Plant Landfill (hereinafter "SWMU #3"), the closed K069 Waste Pile (hereinafter "SWMU #4"), and the closed Main Plant Landfill (hereinafter "SWMU #5") were devoid of vegetative cover and showed signs of erosion. Two holes, each of which were approximately two feet wide and three feet deep, were located near a utilities pole, which was set into the cap of the closed Lower Lagoon / Upper Lagoon (hereinafter "SWMU #6 / SWMU #7"). The utilities pole had compromised the integrity of the cap of SWMU #6 / SWMU #7.

B. Pursuant to Permit Condition VII.B.1.a.i. and ADEM Admin. Code r. 335-14-5-.06(8)(c), all monitoring wells must be assigned an identifying number by the facility, and such numbers must be permanently affixed to the outer casing of each monitoring well. Identifying numbers were not affixed to the outer casings of groundwater monitoring wells EW-4R, EW-5, EW-6, and EW-8.

5. At the conclusion of the August 26, 2009 CEI, Department personnel prepared and issued a preliminary inspection report, which described the above alleged violations, to Sanders.

6. On August 28, 2009; September 1, 2009; September 3, 2009; and September 4, 2009, Sanders provided to the Department written descriptions of the actions taken by Sanders personnel to correct the above alleged violations. The above-mentioned documents indicated that, beginning on August 28, 2009, Sanders personnel affixed identifying numbers to the casings of all groundwater monitoring wells at the facility and that, beginning on September 4, 2009, Sanders personnel repaired all areas of erosion and/or damage to the caps of all land disposal units undergoing post-closure care at the facility.

7. Further correspondence between Sanders and the Department showed that, at the time of Sanders' repairs to the cap of SWMU #6 / SWMU #7 on September 4, 2009, the

abovementioned utilities pole was removed from the cap; that the removal of the utilities pole created one or more holes in the liner system of SWMU #6 / SWMU #7; and that the resultant hole(s) in the liner system of SWMU #6 / SWMU #7 were subsequently repaired using materials that were readily available at the facility. The damage to the liner system was not repaired using the materials and methods described in ADEM Admin. Code r. 335-14-5-.14(11)(b).

8. On October 6, 2009, Sanders personnel excavated and re-repaired the affected area of the cap and liner system of SWMU #6 / SWMU #7 using the materials and methods described in ADEM Admin. Code r. 335-14-5-.14(11)(b). The repairs performed by Sanders personnel on October 6, 2009 were observed by a representative of the Department and an independent registered professional engineer.

9. On October 28, 2009, Sanders submitted to the Department a report, signed and certified by an independent registered professional engineer, describing the methods and materials used to re-repair the liner of SWMU #6 / SWMU #7.

10. Sanders consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. Sanders neither agrees nor disagrees with the Stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMMMA, has consented to the terms of this Consent Order.

11. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

12. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit

which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

13. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department is not aware of any irreparable harm to the environment resulting from the violations.

B. THE STANDARD OF CARE: Sanders did not exhibit a standard of care commensurate with applicable regulatory standards.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Based on the information provided, it appears that no economic benefit was conferred upon Sanders.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Upon discovery of the violations, Sanders took corrective actions to address the violations and to prevent their recurrence.

E. HISTORY OF PREVIOUS VIOLATIONS: A similar violation was cited in 1991.

F. THE ABILITY TO PAY: Sanders has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has determined the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

14. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see attachment A).

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Sanders, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Sanders agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), Sanders agrees to pay to the Department a civil penalty in the amount of \$7,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Sanders agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Sanders' name and address and the ADEM Administrative Order Number of this action.

C. Immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Sanders agrees to comply with all terms, conditions, and limitations of the Hazardous Waste Facility Permit ALD046481032 and the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations alleged in this Consent Order.

F. Sanders agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Sanders agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

H. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Sanders does hereby waive any hearing on the terms and conditions of this Consent Order.

I. The parties agree that this Consent Order shall not affect Sanders' obligation to comply with any Federal, State, or local laws or regulations.

J. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

K. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

L. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

M. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Sanders of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SANDERS LEAD COMPANY INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

EUGENE ROY BAGGETT
(Printed Name)

MAN. OF ENVIRONMENTAL AFFAIRS
(Printed Title)

12/18/2009
(Date Signed)

John P. Hagood
Director

(Date Executed)

ATTACHMENT A

Penalty Calculation Worksheet

Sanders Lead Company, Inc.
ALD046481032
Troy, AL

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Post-Closure Procedures and Use of Property	1	\$6,500	\$0	\$0
General Groundwater Monitoring Program	4	\$500	\$0	\$0
Totals:	5	\$7,000	\$0	\$0

Economic Benefit:	<u>\$0</u>
Mitigating Factors:	<u>\$0</u>
Ability to Pay:	<u>\$0</u>
Other Factors:	<u>\$0</u>

Civil Penalty: \$7,000

Footnotes

* See the "Contentions" of the Order for a detailed description of each violation and the penalty factors